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IN THE
Supreme Court of the United States

October Term, 1946.

No. 238

G. H. LOVE, INC.,

Petitioner,

vs.

PHILIP FLEMING, Administrator Office of Temporary
Controls,

Respondent.

PETITION FOR WRIT OF CERTIORARI AND
BRIEF IN SUPPORT THEREOF.

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G. H. LOVE, INC.,

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PHILIP FLEMING, Administrator Office of Temporary
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Respondent.

PETITION FOR WRIT OF CERTIORARI.

*To the Honorable Chief Justice Fred Vinson, and to the
Honorable Associate Justices of the Supreme Court
of the United States:*

Your petitioner, G. H. Love, Inc., petitions this Honorable Court for a Writ of Certiorari directed to the United States Circuit Court of Appeals for the Ninth Circuit to review the judgment and order of that court and in respect thereto shows as follows:

Jurisdiction.

The jurisdiction of this court is granted by Title 28, Section 347, U. S. Codes, Section 240 of the Judicial Code, and by Title 50, App., Sec. 925, subdivision (c).

The order of the District Court was made July 26, 1945 [R. 21, 22, 23], and modified August 13, 1945. No-

tice of Appeal was duly and regularly filed [R. 24]. The order of the District Court was affirmed May 3, 1947, and Petition for Rehearing was denied June 2, 1947 [R. 82, 83].

Statutes and Regulation Involved.

The Emergency Price Control Act of 1942, as amended (50 U. S. C., App. 901 *et seq.*):

Section 922 provides as follows:

Title 50, App. Sec. 922, as follows:

(a) The Administrator is authorized to make such studies and investigations, to conduct such hearings, and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act (sections 901-946 of this Appendix), or in the administration and enforcement of this Act (sections 901-946 of this Appendix) and regulations, orders, and price schedules thereunder.

(b) The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer

oaths and affirmations and may, whenever necessary, by subpoena require any such person to appear and testify or to appear and produce documents, or both, at any designated place.

(c) For the purpose of obtaining any information under subsection (a), the Administrator may by subpoena require any other person to appear and testify or to appear and produce documents, or both, at any designated place.

(d) The production of a person's documents at any place other than his place of business shall not be required under this section in any case in which, prior to the return date specified in the subpoena issued with respect thereto, such person either has furnished the Administrator with a copy of such documents (certified by such person under oath to be a true and correct copy), or has entered into a stipulation with the Administrator as to the information contained in such documents.

(e) In case of contumacy by, or refusal to obey a subpoena served upon, any person referred to in subsection (c), the district court for any district in which such person is found or resides or transacts business, upon application by the Administrator, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The provisions of this subsection shall also apply to any person referred to in subsection-(b),

and shall be in addition to the provisions of section 4 (a), (section 904 (a) of this Appendix). . . .

(g) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U. S. C., 1934 edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege. . . .

(i) Any person subpoenaed under this section shall have the right to make a record of his testimony and to be represented by counsel. Jan. 30, 1942, c. 26, Title II, §202, 56 Stat. 30, as amended June 30, 1944, c. 325, Title I, §105, 58 Stat. 637.

General Maximum Price Regulations, to-wit, Sections 1499.11 and 1499.12. (See Appendix.)

The Fourth Amendment to the Constitution of the United States.

OPA Price Decontrol Orders No. 193 removing price amendment 1, volume 11, page 13464.

SPECIFICATIONS OF ERRORS.

Questions Presented.

1. Whether the Trial Court and Circuit Court of Appeals erred in granting an Order of Inspection when the only method for compelling such an inspection is provided by subpoena *duces tecum*.

2. Whether an inspection requirement violates the Fourth Amendment to the Constitution of the United States, where there is no oath or affidavit showing probable cause before a magistrate.

3. Whether a statute permitting an inspection of books and records is a broadside roving commission unauthorized by the Fourth and Fifth Amendments to the Constitution of the United States.

4. Whether service of the inspection requirement on a person who is a general manager and in actual charge of the corporation is sufficient to give the Court jurisdiction over the corporation for purposes of an order requiring the corporation to submit its records for inspection under the act.

5. Whether, in view of the termination of Price Control, the particular requirement for an inspection has become a moot question.

Reasons Relied on for Allowance of the Writ.

It is important that this Court grant certiorari so that it may be determined whether "Inspections" purportedly authorized by statute and the procedure approved by the courts below are constitutional.

The question is one of importance in determining whether procedurally, where the statute provides for subpoena and for safeguards along with the subpoena,—such as the transcription of the testimony and the presence of counsel,—whether those can be dispensed with by an "Inspection Requirement" without those safeguards surrounding the subpoena and provided for by the statute.

There is also presented the question as to whether, since decontrol, such procedure is now authorized. Neither of these important questions have heretofore been passed upon by this Court.

Wherefore, your petitioner respectfully prays that a Writ of Certiorari may be issued directed to the Ninth Circuit Court of Appeals for the United States of America, commanding that Court to certify and transmit to this Court for its review and determination, a full and complete record of all proceedings had in the above entitled cause; that the judgment of the said Circuit Court of Appeals for the Ninth Circuit may be reversed and that the procedure and proceedings had be declared null and void as in violation of the Constitution and laws of the United States of America.

Respectfully,

MORRIS LAVINE,

Attorney for Petitioner.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1946.

No.

G. H. LOVE, INC.,

Petitioner,

vs.

PHILIP FLEMING, Administrator Office of Temporary
Controls,

Respondent.

BRIEF IN SUPPORT OF THE PETITION.

The Opinion.

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit is to be found in the record on page 77 *et seq.*, and in 161 F. (2d) 726.

Jurisdiction.

This Court has jurisdiction to review the cause under Section 240A of the Judicial Code as amended and Title 50, App. Sec. 925(c). The order and judgment of the Circuit Court of Appeals was rendered on May 3, 1947. The petition for rehearing was denied June 2, 1947. The mandate was stayed pending determination of the cause by this Honorable Court.

Statement of the Case.

On December 28, 1944, a petition was filed in the District Court of the United States for an order requiring a respondent corporation, G. H. Love, Inc., a small furniture store in the City of Los Angeles, to permit inspection and copying of certain documents, to-wit:

“(a) Base period records required to be kept under the provisions of Section 1499.11 of the General Maximum Price Regulation,

(b) Records showing prices charged for commodities or services sold after the effective date of the General Maximum Price Regulation, to-wit, May 18, 1942, and the basis upon which the maximum prices for those commodities or services were determined, as required by Section 1499.12 of the General Maximum Price Regulation.”

and to permit the aforesaid representatives of the Office of Price Administration to copy all or any part of the said documents, and (6)

You Are Further Required to Permit the aforesaid representatives to inspect the following:

(a) Compliance with posting requirements as provided in Section 1499.14 of the General Maximum Price Regulation on cost-of-living commodities:

(b) Compliance with tagging requirements on used mechanical refrigerators as required by Section 1380.203 (a) of Maximum Price Regulation 139;

(c) Compliance with tagging requirements on used furniture in accordance with Section 14 of Maximum Price Regulation 429;

(d) Compliance with posting of ceiling prices in accordance with Maximum Price Regulation 429;

(e) Compliance with tagging requirements on used domestic gas ranges in accordance with Section 9 of Maximum Price Regulation 527;

(f) Compliance with posting of ceiling prices in accordance with Maximum Price Regulation 527."

The petition to the Court was not on oath or affirmation as to its contents or as to its necessity.

The petitioner files in support of his petition to the Court an "Exhibit A," called "Inspection Requirement," signed by the District Director of the Office of Price Administration, and "Exhibit B," that this office served upon "Mr. Ed Schwartz, President, G. H. Love Corporation, at the office of said corporation [R. 7-9]. The District Court of the United States issued an Order to Show Cause to the defendant corporation why the Inspection Requirement should not issue [R. 10]. A writ to the order to show cause denying that any inspection was ever served on an officer of G. H. Love Corporation and denying jurisdiction to compel inspection in this matter, was filed. The case came on for argument and objections to the order of inspection. It was the principle contention of the appellants that inspection could only be compelled in a manner provided by statute, to-wit, by subpoena, and that any other

procedure was not authorized by the statute and was not sanctioned by the statute. It was also contended that the procedure attempted to be followed was in violation of the Fourth Amendment to the Constitution of the United States. These contentions were overruled by the courts below.

The District Court, after a hearing, granted the Order of Inspection. It appeared in the hearing that Ed Schwartz was not the President of G. H. Love, Inc., but managed the same. It also appeared at one stage of the case that the Government sought a subpoena in the place of insisting on the "order of inspection," but dropped it and pursued its request for an order of inspection.

Since the above order the Administrator, by order No. 126 as amended, decontrolled and removed price control from businesses of the character of petitioner. Price control on furniture was removed prior to that time. (F. R. 11, page 13464.)

Statutes and Regulations.

These are set forth in the Petition, *supra*, and Appendix.

Specifications of Errors.

1. The Circuit Court erred in holding that the Administrator had a right to an inspection requirement when the lawful procedure was only by subpoena.

2. An "inspection requirement" violates the Fourth Amendment to the Constitution of the United States in that it provides for inspection without *oath* or *affirmation* and without a showing of *reasonable* or *probable* cause.

3. An inspection requirement without a subpoena deprives appellant of rights guaranteed by the Emergency Price Control Act.

4. The service of "Inspection Requirement" from the Office of Price Administration upon a *manager* of a corporation is insufficient where the law of the State provides that Secretary of a Corporation is the official custodian of its records.

5. Since the orders of District Court granting an inspection requirement, the termination of Price Control by order of the President terminated any right to proceed further in the matter. An inspection requirement was only provided in any event during the time that price regulations were in force and effect and were not meant to prolong either the life of the Office of Price Administration or its employees, or proceedings not authorized by statute.

However, the appeal is not moot, since a dismissal of it or a failure to revise the order below would permit the unauthorized inspection in a manner contrary to the Statute and Constitutional safeguards.

ARGUMENT.

I.

The Circuit Court Erred in Holding That the Administrator had a Right to an "Inspection Requirement" When the Lawful Procedure Was Only by Subpoena.

The right of inspection under the then existing statute is not denied but the mode and manner of carrying out that right was fixed specifically by statute, namely, that the administrator secure a subpoena *duces tecum*. In response to this subpoena one may have counsel present, one may have all the testimony taken down by a shorthand reporter, and the subpoena itself is only obtainable upon oath or affirmation. (Title 50, App., Sec. 922(g) and (i).) The statute does not authorize an order of inspection and no such safeguards as above set out are provided when there is merely an "order of inspection." Without such authority the Court is without jurisdiction to grant it.

Yakus v. U. S., 320 U. S. 730, 88 L. Ed. 431;

Bowles v. Willingham, 321 U. S. 503, 542; 88 L. Ed. 892;

Hale v. Henckel, 201 U. S. 43.

The mode of carrying on a procedure is the measure of power, and it must be construed only in the light of specific provisions of the statute.

Federal Trade Com. v. Raladam Co., 283 U. S. 643, 75 L. Ed. 1324;

Police Jury v. Britton, 15 Wall. (U. S. 566), 21 L. Ed. 251;

Greely v. Thompson, et al., 10 How. 223, 13 L. Ed. 397;

Pierce v. U. S. and Dover, etc., Bank, et al., 7 Wall. (U. S.) 666, 19 L. Ed. 169, 174 (43 Am. Jur., pp. 68, 69);

Bloomquist v. Haley, 204 Cal. 258;

United Railroads v. Sup. Ct., 170 Cal. 755;

People v. Gunn, 85 Cal. 238;

Crowell v. Martin, 43 Cal. 605;

Michelson v. Painter, 35 Cal. 705;

Zottman's case, 20 Cal. 102;

Compton v. Northwest Eng. Co., 115 Cal. App. 523.

This Court has, during the 1946 term of court, had many questions raised of it regarding the power and authority under subpoena *duces tecum*. It has held that the Court may enforce such subpoenas *duces tecum*.

Penfield Company of California and A. W. Young v. Securities and Exchange Commission, 91 Law. Edition, page 833;

Fleming v. Mohawk Wrecking and Lumber Company, No. 583, October term, 1946, and

Raley v. Fleming, No. 512, October, 1946, term, 91 L. Ed. 991.

In the *Fleming v. Mohawk Wrecking and Lumber Company*, Justice Jackson concurring, said:

"Of all the subpoenas issued by administrative authority, a very small percentage are contested. The important thing for protection of the individual is that when he does have reasons for resisting obedience he can obtain a hearing. I am in doubt as to whether under this Act and the regulations for its administration a person who has reasons for resisting the

subpoena has any administrative review or remedy. But in any event he cannot be punished for contempt until a court order for its enforcement has issued and has been disobeyed.

Enforcement of such subpoenas by the courts is not and should not be automatic. So long as they are subject to full inquiry at this point it does not seem to me important to the individual or inconsistent with the policy of Congress that the subpoena issue by a subordinate of the Administrator. If the courts were to be shorn of their power of independent inquiry before enforcement, and I have thought we were tending that way, cf. dissent in *Penfield v. S. E. C.*, March 31, 1947, I should expect Congress to intend greater responsibility at the point of original issue. I concur only because I think adequate judicial safeguards exist."

II.

An Inspection Requirement Violates the Fourth Amendment of the Constitution of the United States in That It Requires Inspection Without Oath or Affirmation and Without Reasonable or Probable Cause.

If a subpoena, because it is a process of Court, is a form of warrant conforming with the Fourth Amendment to the Constitution of the United States which requires that,

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized,"

then an attempt to inspect without such a subpoena violates the requirements of the Fourth Amendment. The Fourth Amendment to the Constitution of the United States requires that any search or seizure, whether called an inspection or not, or by whatever it may be designated, shall result only from either a violated warrant or reasonable and probable cause for the required inspection. The law requires that such warrants or such subpoenas particularly describe the things to be seized or required, and one who is served with a subpoena *duces tecum* may move to suppress the same and receive a court hearing thereon. Corporations as well as individuals are entitled to the protection of this amendment.

Hale v. Henchel, 201 U. S. 43;

Silverthorne Lumber Company v. U. S., 251 U. S. 385, 64 L. Ed. 319, 24 A. L. R. 1426.

See also:

Federal Trade Commission v. American Tobacco Company, 264 U. S. 298;

U. S. v. Lefkowitz, 245 U. S. 452;

Harris v. United States, 91 L. Ed. 1013;

American Lithograph Co. v. Werckmeister, 221 U. S. 603;

American Tobacco Company v. Werckmeister, 207 U. S. 284;

Boyd v. United States, 116 U. S. 616.

III.

As the Statute Is Construed by the Courts Below, an Inspection Requirement Without a Subpoena Deprives Appellant of Rights Guaranteed by the Emergency Price Control Act.

The Emergency Price Control Act provides, among other things, that at any hearing of the subpoena a person may have the matter taken down in shorthand and a record made of his testimony, and to be represented by counsel. (Sec. 922 i.) It also provides for the right to claim the privilege against self incrimination.

To compel the production of documents and records without affording the person these rights is to deprive him of things which the statute plainly intended him to have; thus, there would be no reason or necessity for having a subpoena if one could simply require the information by an "Inspection Requirement." If the safeguards against searches and seizures mean anything, then they are to be construed liberally to safeguard the right of privacy.

U. S. v. Lefkowitz, 285 U. S. 452, 464, 76 L. Ed. 877;

Harris v. U. S., 91 L. Ed. page 1031.

See also cases cited in the review of authorities on the Fourth Amendment by Mr. Justice Frankfurter at the end of *Harris v. U. S.*

If by statute, inspection can be required, with nothing more, privacy is lost. The Fourth Amendment is destroyed and rights protected by that amendment are lost.

IV.

The Service of an Inspection Requirement From the OPA Upon a Manager of a Corporation Is Insufficient Where the Law of the State Provides That the Secretary of the Corporation Is the Official Custodian of Its Records.

Under California law, the secretary of a corporation is official keeper of its books and records. (Sec. 308, Civ. Code of Calif.) The service, the notice requirement is necessary in respect to the matter and should have been served upon the secretary of the corporation.

V.

Even if the Order for Inspection Was Lawful and Proper When Made Something Has Occurred Since Then to Make the Order Invalid at the Present Time.

Since the orders of District Court granting an inspection requirement, the ending of price control in the furniture business by the Administrator and the subsequent termination of Price Control (11 F. R. 13464) terminated any right to proceed further in the matter. An inspection requirement was only provided in any event during the time that the regulations were in force and effect and were not meant to prolong either the life of the Office of Price Administration or its employees.

Since the Order was made by the District Judge the war has ended, the *emergency under which the Emergency Price Control Act* was passed and the congressional authority to maintain it has ended, decontrol has been demanded by the people and put into effect by the President. While the OPA has tried to survive and while its attorneys, counselors and employees have tried to perpetuate

themselves, the agency has been given its death sentence by the presidential decree. What then can be the purpose of an inspection requirement today? This requirement was given the Administrator as an emergency war measure "to make such studies and investigations, to conduct such hearing and to obtain such information as he deems necessary or proper to sustain any regulation "regarding price control now no longer in existence."

The section then follows with provisions regarding subpoenaing a person, but both of these sections must be read in conjunction with Section 1(a) of the Act which provides: "It is hereby declared to be in the interest of the national defense and security, and necessary to the effective prosecution of the present war . . . to assure that defense appropriations are not dissipated by excessive prices." Thus it appears that when the authority was granted to the Administrator, it was granted as an aid "to the effective prosecution of the present war," which war has ended. And, second, to aid the Administrator in obtaining the information that he had to, or desired to, obtain for the purpose of fixing prices of commodities and to permit the inspection and copying of records in arriving at his schedules, or such other information that he wished to aid him in carrying out the "effective prosecution of the present war." In relation to price control, now defunct as relates to the furniture business, the furnishing of such information entitled the person to claim immunity as provided by the Testimonial Act, 202(g).

Then, Congress made the Act an *emergency* act and thus specified that it was not to be prolonged beyond "the emergency." It is a principle of law that when the reason for a statute ceases to exist that the statute ceases to

exist. (*Chambers v. United States*, 291 U. S. 217 at 226.) This is a principle both of law and of equity in justice. Hence, since the declared purposes of the statutes have ceased to exist there is no further need for an inspection requirement as necessary "to the effective prosecution of the present war" by price control which has ended.

Furthermore, the Act is designated "Price Control Act", which Price Control Act has been terminated (11 F. R. 13464) and Congress has expressed repeatedly its determination to decontrol wartime controls.

The Provisions of the Act Give No Jurisdiction to the Court to "Sustain" an Order of Inspection.

The authority to proceed in any event must be examined in the light of Section 1(b), Title 50, App. 25, which provided a yearly termination date and contains its own purported savings clause "as to offenses committed or rights or liabilities incurred prior to such termination date." The present action is not an offense nor is it a right or a liability incurred.¹

¹Section 901(b), Title 50, App., United States Code, provides as follows:

"The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1945, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of *sustaining* any proper suit, action, or prosecution with respect to any such right, liability, or offense.

Furthermore, the section only provides that its requirements "shall be treated as still remaining in force for the purpose of sustaining any proper suit", etc. Since the section contains the word "proper suit" it cannot be maintained that this act is a "proper suit" for any present purpose to aid in the "effective prosecution of the *present war*." Since the language therein used must look back to the other parts of the statute, it all must be considered together.

There appears to be no particular legislative history behind the word "sustaining." However, it is a fundamental rule of statutory interpretation that words are construed in accordance with their ordinary meaning.

The word "sustain" as used in the statute could, therefore, only refer to an already existing action or prosecution.

Roget's International Thesaurus gives thirteen terms which are associated with the word "sustain." One of these, "act," has reference to acting on a stage (sustaining a part). The other twelve associated terms are: continue, stabilize, preserve, strengthen, operate, support, feed, corroborate, demonstrate, *maintain*, endure, and *justify*.

The Oxford English Dictionary gives only one definition of "sustain" in connection with an action: "to keep going, keep up (an action or process)."

Funk & Wagnall's New International Dictionary gives as the primary meaning of the word "sustain": "to keep from sinking or falling."

Webster's New International Dictionary (Second Edition), gives as the primary meaning of the word "sus-

tain": "to carry on", or "to maintain, and that is the general meaning of the term. Webster's further definition of the word "sustain" is as follows:

"To maintain, or cause to continue, in existence or a certain state, or in force or intensity; to keep up, esp. without interruption, diminution, flagging, etc., to prolong; as, to sustain conversation for hours; incapable of sustained efforts."

"To keep (one, one's mind or spirits, etc.) from sinking or giving way; to buoy up; as, he is sustained by hope."

The word "sustain" was defined by the Supreme Court in Washington in *Barbour v. St. Paul F. & M. Ins. Co.*, 171 Pac. 1030, in which the court stated:

"But even if this were not so, when we look to the words of the policy which it is well settled must be strictly construed against the insurance company, we do not find that it provides that no action shall be 'commenced', but that no action shall be 'sustainable'. At the time plaintiffs sought to sustain their action by proof, the examination had been signed and was in the hands of the defendant. All that the policy required had been performed."

The word "sustaining" has also been held to be synonymous with "maintaining", and the word "maintaining" means "to keep up, to keep from change, to preserve."

Louisville R. R. Co. v. Goodman, 104 Ind. 492.

In *150 East 47th Street Corp. v. Paul A. Porter, Price Administrator*, No. 349, the United States Emergency Court of Appeals considered a case involving the continuation; the court therein said:

"Accordingly the motion for leave to amend the complaint ought to be granted and the motion to dismiss the complaint denied if it be that this court continues in existence after June 30, 1946, the termination date of the Emergency Price Control Act of 1942 as amended, with judicial power to hear and determine the present complaint. We therefore proceed to consider that question.

"Section 1(b) of the act, which provides for its termination, is as follows:

" '(b) The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1946, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.'

"It will at once be observed that it is expressly provided that the provisions of the act and all regulations, orders, price schedules and requirements thereunder, shall be treated as remaining in force

after June 30, 1946, for the purpose of sustaining any proper suit, action, or prosecution with respect to offenses committed, or rights of liabilities incurred, prior to that date. Among the provisions of the act are those paragraphs of section 204 which create this court, provide for its organization and operation, and confer jurisdiction upon it to hear and determine complaints objecting to regulations and orders issued under section 2 of the act. Are these provisions to be treated as still remaining in force for the purpose of enabling this court to hear and determine complaints of the character of the one now before us? The answer to this question obviously depends upon whether the complainant's suit in this court is, within the meaning of section 1(b), a proper suit with respect to an offense committed or a right or liability incurred prior to June 30, 1946."

The following is the legislative construction of Section 1(b) of the Emergency Price Control Act of 1942:

House Report No. 1409, November 7, 1941, 77th Congress, Second Session:

Section 1(b) provides that the powers conferred under the Bill shall terminate on June 30, 1943, unless sooner terminated by Act of Congress or by a declaration of the President that such powers are no longer necessary in the interest of the national defense and security.

Section 1(c) makes the provisions of the bill applicable to the United States, its territories and possessions, the District of Columbia, and the Philippine Islands.

Senate Report No. 931, January 2, 1942, 77th Congress, Second Session:

Section 1(b) provides that the powers conferred under the Bill shall terminate on June 30, 1943, unless sooner

terminated by Act of Congress or by a proclamation by the President that such powers are no longer necessary in the interest of national defense and security.

Section 1(c) makes the provisions of the bill applicable to the United States, its territories and possessions, and the District of Columbia.

Senate Report No. 1609, September 19, 1942:

Section 6 of the joint resolution as reported provides for terminating the resolution and all regulations thereunder on June 30, 1944, or on such earlier date as the Congress by concurrent resolution, or the President by proclamation, may prescribe. An exception is made in the case of Sections 8 and 9 relating to loans upon agricultural commodities by the Commodity Credit Corporations, since such sections are applicable to crops of the commodities for any calendar year which begins during the continuance of the present war.

From the United States Senate I received the following report of the legislative history:

The clause in section 1(b) of the Emergency Price Control Act of 1942 containing the word "sustaining" was derived from H. R. 5479—77th Congress which was sponsored by the Administration. After extensive hearings by the House Committee on Banking and Currency, a new bill (H. R. 5990) was written and reported. Throughout the legislative history this clause remained intact and the reports (H. Rep. 1409, S. Rep. 931 and H. Rep. 658) contain no clarifying statements as to its intended application. See also the proposed substitute of Congressman Gore, Congressional Record, Volume 87, p. 9145.

Those sections of the hearings and debate which have been examined (see Congressional Record for November 24, 25, 26 and 28, 1941; January 7, 8, 9 and 10, 1942; and January 26 and 27, 1942) revolve about the more controversial proposals, such as licensing and parity, rather than the saving clause in question.

An "inspection requirement" is not "proper suit" action or prosecution service termination of price control.

Furthermore, the statute expired June 30, 1946. It would not be within the constitutional power of Congress to reinstate a suit which had lapsed on June 30, 1946. Congress' re-enactment of the Emergency Price Control Act on July 25, 1946, could not have that effect.

Respectfully submitted,

MORRIS LAVINE,

Attorney for Petitioner.

APPENDIX.

The Fourth Amendment to the Constitution of the United States:

"The right of the people to be secure in their persons, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Office of Price Administration Decontrol Orders:

"Chapter XI—Office of Price Administration, Part 1305—Administration [SO 193] Exemption from Price Control of All Commodities Except Sugar and Rice.

Section 1. *Commodities exempt.* All commodities (including services) are exempt from price control except:

(a) Sugar and sugar solutions derived from sugar cane or sugar beets, including all grades of edible syrups and molasses, and blackstrap molasses (imported and domestic);

(b) Corn syrup and corn sugar (imported and domestic);

(c) Blended syrups (imported and domestic) which contain at least 20% by weight or volume of sugar, sugar solutions, corn syrup or corn sugar, either singly or in combination; and

(d) Rice, rough and milled (imported and domestic).

Sec. 2. *Preservation of Records.* Records shall be preserved as provided by Supplementary Order 189.

Sec. 3. *Stabilization Act of 1942, as amended.* This order does not affect the notice requirements of section 1 of the Stabilization Act of 1942, as amended, applicable to common carriers and other public utilities.

This supplementary Order No. 193 shall become effective as of 12:01 a. m. November 10, 1946.

Issued this 12th day of November 1946.

PAUL A. PORTER,
Administrator.

[F. R. Doc. 46-20381; Filed Nov. 13, 1946, 10:46 a. m.]”

Federal Register, Vol. 11, Thursday, November 14, 1946, page 13464.

“Chapter XI—Office of Price Administration, Part 1305—Administration [SO 193, Amdt. 1]. Elimination of Certain Reporting Requirements.

Supplementary Order 193 is amended by the addition of a new section reading as follows:

Sec. 4. *Elimination of certain reporting requirements.* All requirements in any regulation or orders that a seller or buyer of a commodity or service report to the Office of Price Administration the price

he is presently charging or paying for a commodity or service which has been exempted from price control, are hereby revoked.

This amendment is effective immediately.

Issued this 19th day of November, 1946.

PAUL A. PORTER,
Administrator.

[F. R. Doc. 46-20689; Filed, Nov. 19, 1946; 10:40 a. m.]”

Federal Register, Vol. 11, Wednesday, November 20, 1946, page 13637.

General Maximum Price Regulations, to-wit, Sections 1499.11 and 1499.12.

“Section 1499.11 provides in part as follows:

“*Base-period records.* Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation, shall:

“(a) Preserve for examination by the Office of Price Administration all his existing records relating to the prices which he charged for such of those commodities or services as he delivered or supplied during March 1942, and his offering prices for delivery or supply of such commodities or services during such month; and

“(b) Prepare, on or before July 1, 1942, on the basis of all available information and records, and thereafter keep for examination by any person during ordinary business hours, a statement showing:

“(1) The highest prices which he charged for such of those commodities or services as he delivered or supplied during March 1942 and his offering prices for delivery or supply of such commodities or services during such month, together with an appropriate description of identification of each such commodity or service; and

“(2) All his customary allowances, discounts, and other price differentials.

Section 1499.12, as follows:

“Sec. 1499.12 *Current records.* Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation shall keep, and make available for examination by the Office of Price Administration, records of the same kind as he has customarily kept, relating to the prices which he charged for such of those commodities or services as he sold after the effective date of this General Maximum Price Regulation; and, in addition, records showing, as precisely as possible, the basis upon which he determined maximum prices for those commodities or services.”

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 238

G. H. LOVE, INC., PETITIONER

v.

PHILIP FLEMING, ADMINISTRATOR, OFFICE OF
TEMPORARY CONTROLS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT

MEMORANDUM FOR THE RESPONDENT

This case is similar to *A. H. Dossett, d/b/a J. A. Dossett Lumber Company v. Philip B. Fleming, Temporary Controls Administrator*, No. 263, now pending on petition for a writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit. Here, as in the *Dossett* case, an "Inspection Requirement" was issued by the Director of the Los Angeles District Office, Office of Price Administration, on November 28, 1944, requiring petitioner to permit the representatives of the Office of Price Administration named therein to inspect certain of its books and records (R. 6-8).

(1)

After petitioner refused to permit such inspection, Chester Bowles, then Price Administrator, on December 28, 1944, filed a petition in the District Court for the Southern District of California, praying that an order issue requiring it to do so (R. 2-9). On July 26, 1945, the district court entered an order requiring petitioner to permit "representatives of the Office of Price Administration" to inspect, at petitioner's place of business, the records specified in the order (R. 21-22). On appeal to the Circuit Court of Appeals for the Ninth Circuit, the order of the district court was affirmed (R. 77-82; 161 F. 2d 726).¹

Since the entry of the judgment below on May 3, 1947, all authority of the Office of Price Administration, even as part of the Office of Temporary Controls, has either been terminated or transferred to other agencies of the Government, as described in our Memorandum for the Respondent in the *Dossett* case. Hence, irrespective of whether an action to enforce an inspection requirement is covered by the saving clause of the Emergency Price Control Act, a question discussed at some length in the petition for certiorari (pp. 19-25), it is clear that the questions presented respecting the validity of the inspection

¹ On motions of the Government, Paul A. Porter and Philip B. Fleming were successively substituted as appellees in the circuit court of appeals (R. 67-75).

requirement in this case are academic and moot, since the Office of Price Administration, the representatives of which are the only persons authorized by the order of the district court to inspect petitioner's books, no longer exists.

We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

✓ PHILIP B. PERLMAN,
Solicitor General.

T. VINCENT QUINN,
✓ *Assistant Attorney General.*

✓ ROBERT S. ERDAHL,
✓ SHELDON E. BERNSTEIN,
Attorneys.

OCTOBER, 1947.